

Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors in Parklands, Sector 75, 82 to 85, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	H6-03-GF, H Block admeasuring 1022 sq. ft. Ground Floor
6.	Date of Booking	03.06.2009
7.	Date of allotment	24.12.2009
8.	Date of builder buyer agreement	30.12.2015
9.	Deemed date of possession	30.12.2018
10.	Possession clause in BBA (Clause 6.1)	Clause 6.1:-



		<p>“The seller/confirming party proposes to make offer possession of the unit to the purchaser(s) within the Commitment Period along with Grace Period”</p> <p>Further, “Commitment Period” is defined under clause 1.3as under “Commitment Period” shall mean, subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/ or documentation, as prescribed/ requested by Seller/ Confirming Party, under this Agreement and not being in default under any part of this Agreement including but not limited to the timely payment of all instalments of the Basic Sale Price and Other Charges as per the payment plan opted, the Seller/ Confirming Party shall offer the possession of the unit to the Purchaser(s) within a period of 36(thirty six) months from the date of execution of this Agreement.</p>
11.	Basic sale consideration	₹ 24,05,198.28/-
12.	Amount paid by the complainant	₹ 25,82716.45/-



13.	Date of offer of Possession	Not given till date
-----	-----------------------------	---------------------

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a unit in the project of the respondent namely "Park Elite Floors" in 'Parkland' situated at sector 75, 82 to 85, Faridabad, Haryana on 25.05.2009 upon payment of ₹ 2,50,000/- as booking amount. Complainant was allotted unit no. H6-03-GF, measuring 1022 sq. ft. Ground Floor, Park Elite Floors, Parklands, Faridabad vide allotment letter dated 24.12.2009. A copy of the allotment letter is annexed as Annexure C-3. A floor buyer agreement was executed between both the parties on 30.12.2015. A copy of the floor buyer agreement is annexed as Annexure C-6 in the complaint file. The basic sale price of the unit was fixed at ₹ 24,05,198.28/- against which the complainant has paid a total amount of ₹ 26,80,546/- (Correct paid amount is Rs. 25,82716.45/- . However, the complainant on page no.10 of the complaint stated the paid amount as Rs.26,80,546/-) till date. As per Clause 6.1 of the agreement possession of the unit was to be delivered within the commitment period along with grace period. As per clause 1.3, respondent was allowed a commitment period of thirty six(36) months from the date of execution of the floor buyer agreement. Further, the



promoter shall also be entitled to a grace period of 180 days after expiry of 36 months for making an offer of possession. That taking a period of 36 months from the date of execution of the agreement, the deemed date of possession works out to 30.12.2018.

4. That at the time of allotment, respondent had issued a letter conveying that the unit will be ready within 24 months and delivered to complainant within another 6 months after obtaining occupation certificate. That respondent failed to execute a builder buyer agreement with the complainant for more than 5 years since the time of allotment of the unit in question in 2009. Despite repeated requests, respondent failed to execute a floor buyer agreement until the year 2015.
5. The respondent has opted for unfair trade practices and deficiency in services by duping the home buyers with a promise to deliver possession in 24 months with a grace period of 6 months. The complainant had paid the entire money linked with achieving construction benchmarks. It is submitted that even after a lapse of more than ten years from the date of booking, respondent is not in a position to offer possession of the booked unit to the complainant. It is further stated that till date, the respondent has neither provided possession of the unit nor refunded the deposited amount along with interest.
6. That in terms of the agreement in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq



ft. of the super built up area per month as compensation to the purchaser in the agreement whereas in case of delay in payment of instalments by complainant, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainant is aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest.

7. The terms of the agreement are arbitrary in nature and heavily biased in favour of the respondent as the respondent has not given any exit option to the complainant in floor buyer agreement.
8. Aggrieved by the non-delivery of the unit by the respondent, the complainant had contacted the respondent on several occasions and requested for handing over the peaceful possession of the unit without any further delay. However, till date, the respondent has not offered the possession of the unit.
9. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed by the complainant.

C. RELIEFS SOUGHT

10. That the complainant seeks following relief and directions to the respondent:-



- i. Direct the respondent to handover possession of the unit H06-03- GF admeasuring 1022 sq ft in, Ground Floor, Park Elite floors, Parklands Faridabad.
- ii. Declare that the terms of the BBA are one-sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.
- iii. Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of two years and six months from the date of first receipt of money i.e. 25.05.2009 against the booking of the unit H 06-03-GF, admeasuring 1022 Sq. Ft., First Floor, Park Elite Floors, Parklands, Faridabad.
- iv. Declare that the amount collected towards increase in super area as illegal as there is no increase in the area from the one approved by the State Authorities and there is no approved revision in building plans thereafter from the competent authorities.
- v. Direct the respondent to pay compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment.



- vi. Direct the respondent to compensate the complainant for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent.
- vii. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

11. During the course of arguments, Mr. Nitin Kant Setia, learned counsel for the complainant argued that the complainant had booked a unit in the project of the respondent in the year 2009. Thereafter, unit bearing no. H06-03-GF had been allotted to the complainant on 24.12.2009. However, after allotment of the unit, respondent failed to execute a floor buyer agreement with the complainant despite several requests. Communication sent by the complainant to the respondent for execution of the floor buyer agreement have been annexed at page 50-51 of the complaint file. Although respondent had sent an email to the complainant stating that agreement of Park Elite Floor had been sent to the complainant on 26.11.2012, however the complainant never received the said document. The same was duly communicated to the respondent vide email dated 01.12.2012. That the respondent deliberately delayed

A handwritten signature in blue ink, appearing to read 'had', is written over a horizontal line.

execution of floor buyer agreement by more than 5 years to reduce the delayed possession charges admissible to the complainant as the project had already been delayed. Learned counsel for the complainant prayed that the deemed date for delivery of possession be taken as a period of three years from the date of allotment as reasonable period to complete the construction and deliver possession. Accordingly, complainant is entitled to delayed possession charges from 24.12.2012. He further submitted that he is not pressing upon the relief clause no. (iv) with respect to alleged increase in area.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 19.01.2023 pleading therein as under:-

12. It is submitted that the unit in question was booked by the complainant in 2009. On 24.12.2009, respondent duly allotted a unit bearing no. H06-03-GF on the ground floor having tentative area of 1022 sq ft. A floor buyer agreement was executed between both the parties on 30.12.2015. The respondent in line with the terms of the floor buyer agreement subject to force majeure, proposed to hand over possession of the unit within a period of 36 months from the date of execution of the floor buyer agreement along with a further grace period of 180 days. Therefore, due date of possession arrives out to be 30.06.2019.



13. That the floor buyer agreement was signed by the complainant in the year 2015, that is prior to coming into force of Real Estate (Regulation and Development) Act, 2016. Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA, the same shall be binding on the parties and cannot be reopened.
14. Since the unit in question is being constructed over a plot area tentatively measuring 95.94 sq.mtr, as per Section 3(2)(a) of RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 sq. metres
15. Regarding relief sought by complainant towards super area is untenable as it has been duly agreed between the parties that super area of the floor shall be subject to the change/amendment, i.e., increase or decrease in terms of clause 4.2 of the floor buyer agreement. Initially allotted area was tentative and the same was subject to change/alteration/modification/revision.
16. The project "Elite Floors" has been marred with serious defaults and delays in timely payment instalments by majority of customers. Further, construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in **M.C Mehta v. Union of India**, ban by Environment Pollution (Prevention and Control) Authority etc. Further, the



construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondents, the construction got delayed. It is germane to mention that the construction was further affected by the ban announced by the Commission for Air Quality Management (CAQM) on 16.11.2021 on the direction issued by the Hon'ble Supreme Court of India whereby it banned the construction and demolition activities in Delhi-NCR region.

17. During the course of hearing, learned counsel for the respondent further argued that the complainant had voluntarily entered into the floor buyer agreement dated 30.12.2015 with the respondent. Thus the terms of the agreement are binding on both the parties. Learned counsel for the respondent relied on judgement passed by Hon'ble Supreme Court in the case titled as "Bharathi Knitting Company Vs DHL Worldwide Express Courier Division" wherein, it has been observed that the parties cannot go behind on the terms of the contract. He submitted that as per the floor buyer agreement the deemed date of possession works out to 30.06.2019 which is including the grace period of 180 days allowed to the respondent



company as per clause 6.1 read with clause 1.11 of the agreement. Therefore, complainant cannot be allowed delayed possession charges prior to the said date. He also submitted that the construction of the project had been delayed because of the pandemic COVID-19 among other factors. The onset of COVID-19 amounts to force majeure conditions for the respondent builder. He prayed that at the time of calculating the admissible delay interest, the period for COVID-19 be excluded for the same on force majeure grounds.

18. Mr. Hemant Saini, learned counsel for the respondent apprised the Authority that at present, unit of the complainant is completed however, respondent is not in a position to issue a valid offer of possession as the unit in question is yet to receive occupation certificate from the Competent Authority. If the complainant is willing to wait for the occupation certificate, then respondent will issue an offer of possession to the complainant after receipt of the same.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection raised by the respondent regarding non maintainability of the complaint.

Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to plots measuring 500 sq. yds., it is observed that the respondent

is developing a larger colony over several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. The argument of the respondent is that since the plot does not exceed 500 Sq. yds. therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoter is a developer of a large project and this plot is one part of the large number of plots. Jurisdiction of the Authority extends to the entire project and each plot of the said project.

E.II Objection raised by the respondent with regard to the deemed date of possession .

As per clause 6.1 read along with clause 1.3 and 1.11 of the floor buyer agreement dated 30.12.2015, possession of the unit was to be delivered within a period of thirty six(36) months from the date of execution of floor buyer agreement. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for offering possession. 36 months from the date of execution of the agreement, the deemed date of possession works out to 30.12.2018. At the outset it is observed that the unit in question had been booked by the complainant in the project of the respondent in the year 2009. Complainant was



allotted unit bearing no. H06-03-GF vide allotment letter dated 24.12.2009. It is noteworthy to observed that a floor buyer agreement had been executed between the parties after a lapse of 6 years, i.e., on 30.12.2015. As per the terms of agreement respondent was to deliver possession of the unit within a period of further 3 years, i.e., by 30.12.2018. It has been argued by the learned counsel for the complainant that the respondent had deliberately delayed execution of the floor buyer agreement to seek time to complete the construction. However, at the time of allotment it had been represented by the respondent that possession will be delivered within a period of 24 months. In cases where there is no fixed date of delivery of possession, as a general principle, a period of 3 years is taken as a reasonable amount of time to complete construction works and deliver possession. Now in this case if a period of three years is taken from date of allotment i.e 24.12.2009, then the possession should have been delivered by 24.12.2012. However, both parties had later on executed a floor buyer agreement dated 30.12.2015 granting respondent a period of 36 months to complete the construction work and deliver possession. It has been argued by the learned counsel for the complainant that the respondent had used its dominant position to its advantage and



forced the complainant into executing the said agreement. Complainant had no choice but to execute the floor buyer agreement thus extending the deemed date of possession to 30.12.2018. In rebuttal learned counsel for the respondent submitted that complainant had voluntarily executed the agreement with the respondent. In case, complainant had an objection with any of the terms of the agreement, complainant could have approached an appropriate Court of law to agitate the same, however, the complainant chose to sign the agreement and is therefore bound by the terms of the same. An agreement duly executed by the parties with their consent cannot be ignored in totality for governing the terms and conditions in respect of the unit in question. Fact of the matter is that as per the floor buyer agreement dated 30.12.2015, the deemed date of possession works out to 30.12.2018. Further, the promoter had agreed to handover the possession of the unit within 36 months from the date of execution of floor buyer agreement. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for offering possession to the complainant after obtaining occupation certificate. As a matter of fact, the promoter did not offer possession of the unit within the time



limit prescribed by the respondent/promoter in the floor buyer agreement. Thus, the period of 36 months expired on 30.12.2018. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

E.III Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 6.1, read along with clause 1.3 works out to 30.12.2018. therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not, the obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.



It is noteworthy to observe that the complainant in this case had booked a unit in the project of the respondent in the year 2009. Complainant had been allotted a unit in the year 2009 itself. As per floor buyer agreement, respondent had been granted time till 2018 to complete the project and deliver possession. Herein the pleas/grounds taken by the respondent to plead the force majeure condition happened after the year 2016. The various reasons given by the respondent are NGT order prohibiting construction activity, ban on construction by Supreme Court of India in **M.C Mehta v. Union of India**, ban by Environment Pollution (Prevention and Control) etc. These reasons are not convincing enough as the ban imposed by such orders on any form of construction activities are of few days/short period of time. For large projects, like the one in question most of the labour is mobilised at site and ban on construction activity for such short periods cannot affect the deemed date of possession for an inordinate amount of time. Therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs*



Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since september, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Factual position is that possession of the unit should have been delivered by December 2018. Respondent has failed to substantiate its claim on grounds of force majeure with documentary proof to establish that the project has been genuinely delayed due to the reasons mentioned above. Delay caused in completion of the project is ranging from the year 2018 and is running till present. Respondent is yet to obtain occupation certificate for the unit in question despite a lapse of



more than 4 years from the expiry of deemed date of possession. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

19. Admittedly, the complainant in the present case had booked a unit in the project of the respondent in the year 2009. The unit in question i.e H06-03-GF, admeasuring 1022 sq. ft was allotted to the complainant vide allotment letter dated 24.12.2009 and thereupon a floor buyer agreement was signed between the complainant and the respondent promoter on 30.12.2015. As per Clause 6.1 of the Buyers Agreement read along with clause 1.3, possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of floor buyer agreement. The main point of contention between both the parties is with regards to the period for which interest for the delay caused in delivery of possession should be admissible to the complainant. Learned counsel for the respondent has argued that complainant should be allowed delay interest from 24.12.2012 since the respondent had deliberately delayed execution of floor buyer agreement to seek more time to complete the project and also reduce the period for which the complainant shall be entitled to delay interest.

20. The facts set out in the preceding paragraph demonstrate that the complainant had entered into a floor buyer agreement with the respondent



company after a gap of nearly six years from the date of allotment, thus granting the respondent a further amount of time to complete construction and deliver possession by 30.12.2018. The construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. At the time of execution of the floor buyer agreement, complainant was well aware of the fact that the possession of the unit has been delayed and that the construction of the unit is not in accordance with the agreed timeline. There were clear apprehensions that the possession of the unit will be further delayed for an uncertain amount of time. The complainant was already mentally prepared to wait for some time in the future to get possession of the booked unit. Though it has been alleged that the respondent has used its dominant position to seek unfair advantage, however, the complainant could have agitated the same under appropriate law available at that time. Fact of the matter is that the complainant chose to sign the floor buyer agreement with the respondent on 30.12.2015 for the unit in question thus crystallising the terms of contract between both the parties.

21. The principal argument of the respondent is with regards to the rights of the complainant in view of the execution of the floor buyer agreement. It is clear that the complainant allottee was aware of the fact that delivery of possession of the unit has been delayed at the time of signing of the floor buyers agreement. Therefore, complainant cannot be allowed to

A handwritten signature in blue ink, appearing to be 'Red', with a horizontal line underneath it.

resile from the terms of the contract after a lapse of more than 8 years from agreeing to the same. An agreement duly executed by the parties with their consent cannot be ignored in totality for governing the terms and conditions in respect of the unit in question. It is true that the execution of the floor buyers agreement had been delayed, however, this fact cannot undermine the validity of said floor buyers agreement dated 30.12.2015. Therefore, as per the terms of the agreement, complainant is entitled to receive delayed possession charges from the deemed date of possession as per the agreement and observations recorded in para EII of this order, i.e., 30.12.2018.

22. In present complaint, the possession of the unit in question was due to the complainant on 30.12.2018. Thereafter, there was a delay of more than 4 years in delivery of possession of the booked unit. Learned counsel for the respondent has submitted that the respondent is not in a position to issue a valid offer of possession as the unit is yet to receive an occupation certificate. On the other hand, learned counsel for the complainant has submitted that the complainant is willing to wait for possession of the booked unit complete in all respects after obtaining occupation certificate. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates



prescribed. The respondents in this case have not made any offer of possession to the complainants till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e, 30.12.2018 up to the date on which a valid offer is sent to her after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:



“Rule 15: *“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”..”

23. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 22.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
24. Hence, Authority directs respondents to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the due date of possession, i.e., 30.12.2018 till the date of a valid offer of possession.
25. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 30.12.2018 till the date of this order, i.e.,



22.11.2023 which works out to ₹ 13,60,826/- and further monthly interest of ₹ 22,820/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 22.11.2023 (in ₹)
1.	25,82,716.45/-	30.12.2018	13,60,826/-
Total:	25,82,716.45/-		13,60,826/-
Monthly interest:	25,82,716.45/-		22,820/-

26. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 26,80,546.45/- in the complaint file. However, out of said amount receipts pertaining to only an amount of ₹ 25,82,716.45/- have been annexed. Therefore, the amount of delay interest payable to complainant is calculated on the paid amount of ₹ 25,82,716.45/-. Further, out of total amount of ₹ 25,82,716.45/-, complainant has paid an amount of ₹ 25,06,513/- and has received a credit of ₹ 76,203.45/- as timely payment discount. As a benefit, the said discount was credited towards the total sale consideration made by the complainant and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainant cannot be denied her rights especially when the



respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainant cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

27. The complainant is seeking compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment and compensation for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



F. DIRECTIONS OF THE AUTHORITY

28. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent shall issue an offer of possession to the complainant within a period of one month from the date of receipt of occupation certificate. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainant on account of delay caused in delivery of possession.

(ii) Respondent is directed to pay upfront delay interest of ₹13,60,826/- (till date of order, i.e., 22.11.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 22,820/- (admissible from 22.11.2023 till the date of valid offer of possession after receipt of occupation certificate).



(ii) Complainant is directed to accept the offer of possession issued by the respondent and take physical possession within a period of two months from said date. Complainant will remain liable to pay the balance consideration amount to the respondent at the time of possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e., 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

29. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]